

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 967 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
BHAGUNJIBHAI MOHANBHAI CHUHAN

Versus

DALICHAND POPATBHAI

-----  
Appearance:

MR KP RAVAL for Appellant

MR AKSHAY H MEHTA for Respondent No.1 to 3

MR KT DAVE, APP for Respondent No. 4

-----  
CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

ORAL CAV JUDGEMENT

This appeal is preferred against the judgment passed by the Ld. Judicial Magistrate (F.C.), Muli, District : Surendranagar, on 8.9.1989 in Criminal Case No.88/86. Criminal case is registered on private complaint filed by the octroi contractor Shri Bhagwanji Mohanbhai Chauhan of village Sara, Ta: Muli, District : Surendranagar under sec. 192-A of the Gujarat Panchayat

Act, 1961 ( hereinafter referred to as the Act ). According to the complainant, he had entered into an agreement with Sara Gram Panchayat and was authorised to collect octroi for the year 1986-87 and was authorised to collect octroi between 1.4.1986 to 31.3.1987. Accused respondents are the partners of the firm M/s Dalichand Popatbhai which is a partnership firm dealing in the business of cotton-seeds etc. at village Sara. On 10.6.1986, respondents imported brought 60 bags of cotton-seeds cake in a motor truck within the octroi limits of Sara Gram Panchayat and according to the complainant, these goods were worth Rs. 6018-00. The material brought was included within the definition of items at Sr.No.71 of the Schedule : I prescribed under Rule 24 of the Gujarat gram & Nagar Panchayat Taxes & Fees Rules,1964 ( hereinafter referred to as the Rules ) and, therefore, the accused were liable to pay Rs. 120-36 by way of octroi on the aforesaid goods. It is contended by the complainant that the accused initially promised to pay that much amount by way of octroi, but later on with an ulterior motive, refused to pay the said amount. According to the complainant, as per the agreement between the Panchayat and himself, he was authorised to collect octroi and non-payment of octroi amount to him with deliberation amounts to an offence punishable under Sec.192-A of the Act. After the trial, the ld. Judge acquitted the accused.

The original complainant- octroi contractor has preferred present appeal on the grounds mentioned in the memo of appeal and has submitted that the ld. Magistrate has failed in appreciating the evidence led by the complainant and has also not considered the other legal aspects involved in the matter.

The appeal is under sec. 378(4) of the Code of Criminal Procedure. Ld. Advocate appearing for the appellant has submitted that the ld. Magistrate has failed in appreciating oral as well as documentary evidence produced during the trial. Ld. Magistrate ought to have held that the complainant was entitled to recover octroi of the goods brought at the rate of 2% and failure to pay the same or to make payment thereof with deliberation or intentionally, amounts to an offence punishable under Sec.172-A of the Act.

I have gone through the oral as well as documentary evidence adduced before the ld. Magistrate. The prosecution case rests on the oral evidence of the complainant ( exh.29 ) and two other documents produced

by the complainant. Exh.30 is contract agreement between the Panchayat and the complainant-contractor. Exh.31 is the Schedule : I under Rule 24 of the Rules. The complainant is cross-examined at length and it has come on record that there was bonafide dispute as to the existing rate leviable by way of octroi for the goods brought by the accused side. During the course of cross-examination of the complainant, one resolution of Sara Gram Panchayat passed on 21.5.1986 is brought on record wherein the Panchayat has interpreted the item reflected at Sr. No.64 to Schedule : I declared under Rule 24 of the Rules and it is resolved by the Panchayat that item at Sr. No.64 would be charged at the rate of Rupee One per every 100 rupees. In other words, 1% octroi only could be charged on the said item. Exh.50 & 51 are the letters addressed by the Panchayat to the complainant- octroi contractor. Exh.50 bears signature of Sarpanch as well as Secretary of the Panchayat and exh.51 bears signature of Secretary of Sara Gram Panchayat. Ld. Magistrate has appreciated all these documents and letters addressed to the Sarpanch, Sara Gram Panchayat by Shah Dalichand Popatlal, Managing Partner of the firm who has allegedly committed the offence. Ld. Magistrate has not committed any error in appreciating oral as well as documentary evidence produced before him. Not only that, the language of Sec.192-A of the Act is also considered in its true spirit and perspective. Even as per condition No.10 of the contract agreement, it was obligatory on the part of the complainant-contractor to raise grievance firstly before the Panchayat. It would be proper to refer to the provisions of Sec. 192-A of the Act which are relevant for the purpose of determining the question before this Court. Sec.192-A of the Act reads as under :-

"192A. Penalty for evasion of octroi.-- Where any animal or goods passing into a gram or nagar are liable to the payment of octroi, any person, who with the intention of defrauding the gram panchayat or nagar panchayat, as the case may be, causes or abets the introduction of or himself introduces or attempts to introduce within the octroi limits of such gram or nagar, any such animal or goods upon which payment of the octroi due on such introduction has neither been made nor tendered, or who fails to comply with any direction given by the officer demanding the octroi by the authority of panchayat with reference to the introduction of the animal or goods within the octroi limits shall be punished, on conviction, with fine which may extend to ten

times the amount of such octroi or to fifty rupees, whichever may be greater."

The above provision, itself is self-explanatory and a plain reading thereof reveals that intentional non-payment of the octroi with a view to defraud gram or nagar panchayat or abetment to such act amounts to an offence which is made punishable.

During the trial, before the ld. Magistrate, the complainant had failed to prove that all or any of the accused did not pay octroi amount with an intention to defraud the Panchayat and or they have abetted each other in commission of the said offence.

During the course of arguments, a point cropped-up whether a private octroi contractor has authority to prosecute the accused under Sec.192A of the Act in absence of express resolution by the panchayat. Ld. APP has submitted that a policy decision has been taken in this regard vide Govt. Resolution dated 11.8.1972. However, since this Court is not called upon to reply this point, and since this point was never agitated before the lower Court, it would not be necessary to discuss this legal aspect being not warranted. When the case against the accused does not fall within the ambit of Sec.192A of the Act and as there is cogent and convincing evidence as to the fraudulent intention on the part of the accused for evasion of octroi duty, the accused cannot be convicted. The ld. Magistrate has rightly appreciated evidence adduced before him in its true perspective and no legal or procedural error is found. The Court hearing acquittal appeal has a limited role to play. The appeal fails and is hereby dismissed.

\*rawal 000000